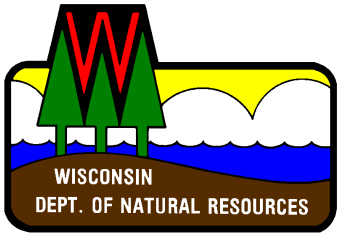


*Redesignating WI Areas to
Attainment for the 1-Hour Ozone
Standard*

**8-Hour Litigation & Future Ozone
Control Planning**

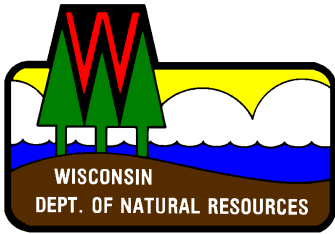
Feb 2002 - AQ Task Force Meetings



Redesignation to Attainment - 1Hr

Changes for WI Ozone Program:

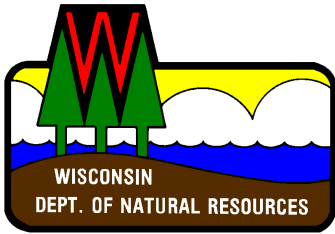
- ◆ Monitoring - No change
- ◆ 1-Hr Attainment Demo Rules - No Backsliding
- ◆ New Source Permitting - Real Changes
 - Nonattainment Area NSR Does Not Apply as of Final State Redesignation Notice
 - PSD for Major New Sources Does Apply
 - New Source Thresholds and Control Technology Requirements (beyond RACT) become Consistent across State



Ozone Planning going Forward

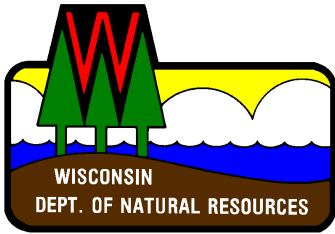
Importance of Voluntary Programs :

- ◆ Improve Air Quality
- ◆ Maintain the 1-Hour Standard
- ◆ To help avoid Nonattainment Designation under the 8-Hour Standard and/or to Minimize 8-Hour Classification Level



8-Hr Ozone Litigation

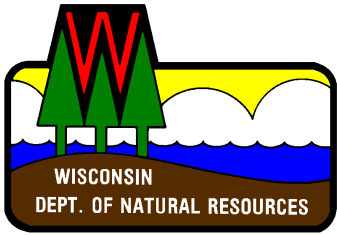
- ◆ Supreme Court Agreed to Hear Case
 - Both Sides Appealed Aspects of DC Circuit Court Decision
- ◆ Court Decision Released - 2/27/01 - Mixed Result
- ◆ Validated both the 8-Hr Ozone and the Fine Particulate (PM-2.5) Health Standards
- ◆ Awaiting lower court final actions & revised EPA Implementation Structure for Ozone



8-Hr Ozone Litigation

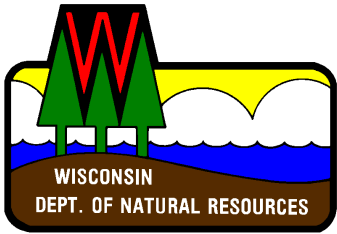
Questions Presented to Supreme Court:

- ◆ Does EPA's Interpretation of the Clean Air Act Lead to an Unconstitutional Delegation of Authority?
- ◆ Should EPA Consider Other Factors (Cost) in Setting Primary Standard?
- ◆ Did DC Court of Appeals Exceed Its Jurisdiction in Reviewing Preamble Statements?
- ◆ Does Clean Air Act Restrict EPA's Ability to Enforce New NAAQS?



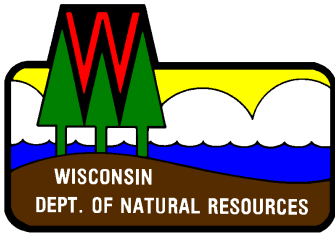
What did the Supreme Court Decide?

- ◆ EPA standard setting was NOT an Un-constitutional Delegation of Authority
- ◆ EPA can NOT consider cost in setting the NAAQS
- ◆ Court of Appeals had jurisdiction to review how standards were implemented
- ◆ EPA's 8-Hour Implementation Plan is Not Lawful as Structured (esp. the Classification Scheme)



Supreme Court Remands

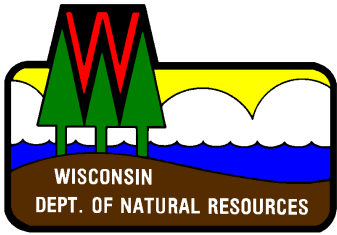
- ◆ **8-Hr Ozone Implementation plan remanded to EPA for refinement to better match CAA structure**
- ◆ **Remanded other 8-Hr issues not not previously addressed/not appealed to lower court - could be ignored**
 - UVB - Protection from skin cancer
(Proposed EPA Notice awaiting finalization addresses issue)
 - Ozone & PM Standards potentially arbitrary and capricious *(a very difficult legal hurdle to prove)*
 - 24-Hour PM_{2.5} standard is not protective enough
(most likely to be addressed in next review - now overdue)
 - 8-Hr Ozone standard should be vacated, because EPA is implementing it *(ozone Flex Policy since narrowed)*
- ◆ **EPA had awaited further lower court action or closure prior to 8-Hr Plan Re-proposal - but expect this summer**



8-Hr Ozone Litigation

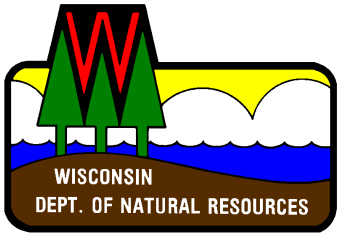
8-Hr Litigation Schedule:

- ◆ Petitioners completed initial briefs on issues to be litigated in DC Court of Appeals
- ◆ December 2001 - Final briefs (?)
- ◆ Conclude Oral arguments this winter ????
- ◆ Decision in spring 2002 ????
- ◆ UVB issue proposed in October - Finalized next summer
- ◆ Future decisions on this case no longer expected to derail new implementation proposal



What will happen now for Ozone & PM Standards and New SIP Requirements?

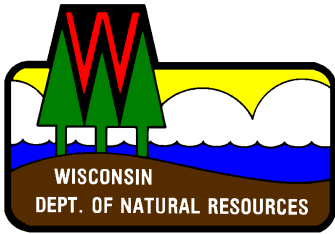
- ◆ New nonattainment area designations were held pending completion of current legal action
- ◆ 5 Year Review is nearing proposal for PM NAAQS and is only mid-stride for ozone
- ◆ EPA must create a new implementation scheme for the 8- hour ozone standard that reasonably reflects the structure & intent of subpart 2 - a big effort
- ◆ EPA's actions refining the 8-hour planning structure could stimulate more lawsuits



Redesignation : Oct 25 Follow-up Questions & Draft Responses

- ◆ ***A – Air Quality Data and Redesignation and Designation Process Issues (this includes some 8-Hr questions and answers)***
- ◆ ***B – Demonstrating Attainment based on Permanent and Enforceable Measures***
- ◆ ***C – New Source Review, Offsets and Permitting Changes***
- ◆ ***D – Scope of the Maintenance and Contingency Plans***
- ◆ ***E - Role of Voluntary Measures***

**See: Air Management Web Page - Hot Topics -
Redesignation**

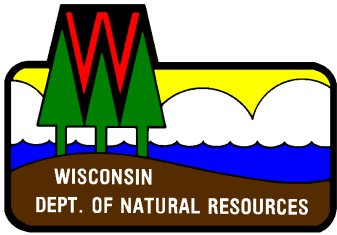


D – Scope of the Maintenance and Contingency Plans

Example Question:

18. Question: In the maintenance plan or elsewhere, will there be continuing efforts on the broader ozone transport issue since past studies have shown impact on the three state region from areas upwind?

- ◆ Answer: The LADCO states including WI are part of a larger (5 state) regional planning effort focused on plans to reduce haze and the precursor fine particulate matter. This effort has to be multi-pollutant in its approach and will include 8-hour ozone planning and analysis support when that standard is finally promulgated based on resolution of the outstanding litigation issues.**



8-Hr Ozone and PM-2.5 Info

- ◆ www.dnr.state.wi.us/org/aw/air/hot/ or, go to DNR Web, Bureau of Air Management, “Hot Topics” (multiple ozone elements)
- ◆ www.epa.gov/ttn/oarpg/naaqsfin/ or, go to EPA Web, Office of Air Quality Planning & Stds (8-hr ozone & PM-2.5)
- ◆ www.epa.gov/otaq/m6.htm or, go to EPA Web, Office of Transportation and Air Quality (previously OMS)

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(Ozone SIP, Multi-pollutant & Mobile Source Planning)

Anne Bogar - 267-3725

(Ozone Info and Programs Outreach)